IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO.251 OF 2006

Samadhan Baburao Patil ...Applicant
vs.
1.State of Maharashtra
2.Sharda Narayan Mandalik ...Respondents

Mr.S.S.Salunkhe for the Applicant
Mr.Rajesh More A.P.P. for State
Mr.Ramchandra Vasekar for Respondent No.2

CORAM: A.S.OKA,J.
DATE : OCTOBER 19,2006.

ORAL JUDGMENT:

1. Rule. Learned A.P.P. waives service for the first Respondent and learned Advocate for second respondent waives service.

2. By Judgment and Order dated 26th August 2004, the learned Judicial Magistrate First Class, Barshi convicted the Applicant for offence punishable under sections 304 (A) and section 279 of the Indian Penal Code. The Applicant was also convicted for offence punishable under section 184 of the Motor Vehicles Act, 1988. The substantive sentences were directed to run concurrently. The maximum substantive sentence is R.I. for three months. In an Appeal preferred by the Applicant, the Sessions Court has set aside the conviction of the Applicant for offence under section 184 of the said Act of 1988. However, his conviction and sentence under section 304(A) and section 279 of the said code has been confirmed.

3. The application for bail filed in this Revision Application came up before this Court (Coram: D.B.Bhosale,J.) on 16th June 2006. Clause Nos.2,3 and 4 of the order passed on 16th June 2006 read thus :

"2) The applicant to add wife of the deceased-Narayan Khandu Mandlik as party respondent within one week from today. Office to issue notice to the added respondent, returnable in six weeks. In addition to the Court notice, the applicant shall serve the newly added respondent by the advocate's notice either personally or through R.P.A.D./speed post/courier/e-mail/fax and file affidavit of service within four weeks from today, failing which, the revision shall stand dismissed for non prosecution without further reference to the Court, even if the court notice remains unserved.

3) Mr.Salukhe, learned counsel for the applicant, on instructions, states that the applicant is prepared to pay compensation of Rs.50,000/- to the added respondent-wife of the deceased. He further states that the applicant shall deposit Rs.25,000/- in this Court within two weeks from today and remaining Rs.25,000/- within four weeks therefrom. The applicant may do so before the adjourned date of hearing. Stand over for six weeks.

4) At this stage, I am informed that the applicant is already taken in custody. Considering the overall facts and circumstances of the case I am inclined to grant bail to the applicant. The applicant may be released on bail on his furnishing P.R.Bond of Rs.3,000/- with one surety of the like amount."

4. Accordingly, a sum of Rs.50,000/- has been deposited by the applicant in this Court. The learned Advocate for the Applicant has placed on record the settlement between the parties which has taken place in execution application filed by the legal representatives of the victim for execution of the Award dated 30th June 2006 passed by the Motor Accident Claims Tribunal in favour of the legal representative of the victim. The Award was in the sum of Rs.2,65,000/- with interest at the rate of Rs.7.5 % p.a. In the said execution application, by way of compromise, the Applicant agreed to pay a sum of Rs.3,00,000/- by way of compensation to the legal representatives of the victim. The consent terms filed between the applicant and the legal representative of the deceased in the said execution application are placed on record and marked ‘X’ for identification.

5. The learned Advocate for the Applicant submitted that the Applicant has complied with the assurance given to this Court which is recorded in order dated 16th June 2006. He submitted that no offence has been established against the Applicant and

in view of the settlement between the parties, an order of acquittal may be passed. The learned A.P.P. opposed the prayer by pointing out the findings recorded by the courts below.

6. I have considered the submissions. Allegation against the Applicant is that the Applicant was riding the motor cycle when he gave a dash to one Narayan Khandu Mandlik. As a result of the dash given by the Applicant, Narayan who was riding a bicycle sustained injuries. He was shifted to the hospital where he succumbed to the injuries. The conviction of the Applicant is for offence punishable under section 304 (A) and 279 of the Indian Penal Code. As stated earlier, the maximum substantive sentence is of three months R.I.

7. After perusing the findings recorded by the Courts below, it is difficult to find fault with the conclusion regarding the guilt of the Applicant. The learned Trial Judge has noted in paragraph 19 of his Judgment that the Applicant is the only earning member of his family and there are five members in his family who are depending upon him for livelihood. Considering the said factual aspect, the learned Trial Judge awarded substantive sentence of only three months. The fine amount for offence under section 304 (A) was fixed at Rs.1000/- and for offence under section 279 fine amount of Rs.500/- was fixed.

8. As stated aforesaid, a sum of Rs.50,000/- has been deposited by the Applicant in this Court. The Applicant has sufficiently compensated the legal representative of the deceased. It is not in dispute that the Applicant has undergone sentence for 10 days. There is no minimum sentence prescribed for both the offences. If peculiar facts of this case are considered, while confirming the conviction of the Applicant, he deserves to be let off on the sentence of 10 days which he has already undergone. The second Respondent who is the widow of the victim has no objection for adopting the said course.

9. Hence, I pass the following order :

i) The conviction of the Applicant for offences under section 304(A) and 279 of the Indian Penal Code is confirmed. However, the order of substantive sentence is modified by treating the sentence of 10 days undergone by the Applicant as a proper sentence.

ii) The second Respondent is permitted to withdraw a sum of Rs.50,000/- deposited by the Applicant in this Court.

iii) The Bail Bonds of the Applicant are cancelled.

iv) Rule is partly made absolute in above terms.

JUDGE